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No. 02-1624

In the Supreme Court of the United States

ELK GROVE UNIFIED SCHOOL DISTRICT AND DAVID W. GORDON, SUPERINTENDENT,
Petitioners,

v.

MICHAEL A. NEWDOW, *ET AL.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF TEXAS, ALABAMA, ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST VIRGINIA, WISCONSIN, AND WYOMING AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

GREG ABBOTT
Attorney General of Texas

BARRY R. MCBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

DON R. WILLETT
Deputy Attorney General for Legal Counsel

R. TED CRUZ
Solicitor General
Counsel of Record

P.O. Box 12548
Austin, Texas 78711-2548
(512) 936-1700

COUNSEL FOR *AMICI CURIAE*

[Additional counsel listed on inside cover]

William H. Pryor, Jr.
Attorney General
State of Alabama

Thurbert E. Baker
Attorney General
State of Georgia

Gregg D. Renkes
Attorney General
State of Alaska

Mark J. Bennett
Attorney General
State of Hawaii

Terry Goddard
Attorney General
State of Arizona

Lawrence G. Wasden
Attorney General
State of Idaho

Mike Beebe
Attorney General
State of Arkansas

Lisa Madigan
Attorney General
State of Illinois

Bill Lockyer
Attorney General
State of California

Steve Carter
Attorney General
State of Indiana

Ken Salazar
Attorney General
State of Colorado

Thomas J. Miller
Attorney General
State of Iowa

Richard Blumenthal
Attorney General
State of Connecticut

Phill Kline
Attorney General
State of Kansas

M. Jane Brady
Attorney General
State of Delaware

A.B. "Ben" Chandler
Attorney General
Commonwealth of Kentucky

Charles J. Crist, Jr.
Attorney General
State of Florida

Richard P. Ieyoub
Attorney General
State of Louisiana

G. Steven Rowe
Attorney General
State of Maine

J. Joseph Curran, Jr.
Attorney General
State of Maryland

Thomas F. Reilly
Attorney General
Commonwealth of
Massachusetts

Michael A. Cox
Attorney General
State of Michigan

Mike Hatch
Attorney General
State of Minnesota

Mike Moore
Attorney General
State of Mississippi

Jeremiah W. "Jay" Nixon
Attorney General
State of Missouri

Mike McGrath
Attorney General
State of Montana

Jon Bruning
Attorney General
State of Nebraska

Brian Sandoval
Attorney General
State of Nevada

Peter W. Heed
Attorney General
State of New Hampshire

Peter C. Harvey
Acting Attorney General
State of New Jersey

Patricia A. Madrid
Attorney General
State of New Mexico

Eliot Spitzer
Attorney General
State of New York

Roy Cooper
Attorney General
State of North Carolina

Wayne Stenehjem
Attorney General
State of North Dakota

Jim Petro
Attorney General
State of Ohio

W.A. Drew Edmondson
Attorney General
State of Oklahoma

Hardy Myers
Attorney General
State of Oregon

Gerald J. Pappert
Acting Attorney General
Commonwealth of
Pennsylvania

Patrick C. Lynch
Attorney General
State of Rhode Island

Henry McMaster
Attorney General
State of South Carolina

Lawrence E. Long
Attorney General
State of South Dakota

Paul G. Summers
Attorney General and
Reporter
State of Tennessee

Mark L. Shurtleff
Attorney General
State of Utah

William H. Sorrell
Attorney General
State of Vermont

Jerry W. Kilgore
Attorney General
Commonwealth of Virginia

Christine O. Gregoire
Attorney General
State of Washington

Darrell V. McGraw, Jr.
Attorney General
State of West Virginia

Peg Lautenschlager
Attorney General
State of Wisconsin

Patrick J. Crank
Attorney General
State of Wyoming

QUESTION PRESENTED

Whether a public school district policy that requires teachers to lead willing students in reciting the Pledge of Allegiance, which includes the words "under God," violates the Establishment Clause of the First Amendment, as applicable through the Fourteenth Amendment.

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INTEREST OF *AMICI*

The State of Texas writes on behalf of all fifty States to urge the Court to reverse the judgment of the United States Court of Appeals for the Ninth Circuit and confirm that voluntary teacher-led recitation of the Pledge of Allegiance in public schools does not violate the Establishment Clause of the First Amendment to the United States Constitution. The *Amici* States have a significant interest in this case because adjudication of the issues presented may directly impact the validity of at least forty-three state statutes providing for the recitation or use of the Pledge of Allegiance by public schoolchildren.[1]

In addition to implying that numerous state statutes are unconstitutional, the decision below "threatens cash-strapped

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1. *See* ALA. CODE §16-43-5 (2001); ALASKA STAT. §14.03.130 (2000); ARIZ. REV. STAT. §15-506 (2002); ARK. CODE §6-16-122 (2003); CAL. EDUC. CODE §52720 (1989); COLO. REV. STAT. tit. 22, §22-1-106 (2003); CONN. GEN. STAT. §10-230(c) (2003); DEL. CODE tit. 14, §4105 (2003); FLA. STAT. ch. 1003.44(1) (2002); GA. CODE §20-2-310(c)(1) (2001); IDAHO CODE §33-1602(4) (2001); 105 ILL. COMP. STAT. 5/27-3 (2002); IND. CODE §20-10.1-4-2.5 (2003); KAN. STAT. §72-5308 (2002); KY. REV. STAT. §158.175(2) (2001); LA. REV. STAT. §17:2115(B) (2001); MD. CODE EDUC. §7-105(c) (2001); MASS. GEN. LAWS ch.71, §69 (2003); MINN. STAT. §121A.11 (2003); MISS. CODE §37-13-7(1) (2001); MO. STAT. §171.021(2) (2003); MONT. CODE §20-7-133 (2001); NEV. REV. STAT. §389.040 (2002); N.H. REV. STAT. §194:15-c (2002); N.J. STAT. §18A:36-3(c) (1999); N.M. STAT. §22-5-4.5 (2001); N.Y. EDUC. LAW §802(1) (2000); N.C. GEN. STAT. §115C-47(29a) (1999); N.D. CENT. CODE §15.1-19-03.1(4) (2001); OHIO REV. CODE §3313.602(A) (1999); OKLA. STAT. tit. 70, §24-106 (2003); OR. REV. STAT. §339.875 (2001); 24 PA. CONS. STAT. §7-771 (1992); R.I. GEN. LAWS §16-22-11 (2001); S.C. CODE §59-1-455 (2000); S.D. CODIFIED LAWS §13-24-17.2 (2002); TENN. CODE §49-6-1001(c)(1) (2002); TEX. EDUC. CODE §25.082 (2003); UTAH CODE §53A-13-101.6 (2000); VA. CODE §22.1-202(C) (2002); WASH. REV. CODE §28A.230.140 (1997); W. VA. CODE §18-5-15b (1999); WIS. STAT. §118.06 (2003).

school districts and underpaid teachers with the specter of civil actions for money damages pursuant to 42 U.S.C. §1983." *See* U.S. Pet. App., at 68a-69a.

Because the daily, voluntary recitation of the Pledge of Allegiance furthers the high, and nonreligious, purpose of nurturing active citizens who grasp the virtues of patriotic life and appreciate our Nation's distinctive heritage, the *Amici* States urge the Court to hold that the practice of reciting the Pledge of Allegiance in public schools is well within the confines of the Establishment Clause.

SUMMARY OF THE ARGUMENT

For nearly fifty years, schoolchildren have begun the day reciting the Pledge of Allegiance to "one Nation under God, indivisible, with liberty and justice for all." 4 U.S.C. §4. Until the Ninth Circuit's unprecedented holding in this case, no court had ever held that the voluntary recitation of the Pledge somehow violates the United States Constitution.

The Ninth Circuit's holding is contrary to the entire body of this Court's Establishment Clause jurisprudence. Indeed, virtually every single reference to the Pledge—by the Court and repeatedly by individual Justices—has confirmed its constitutionality.

From the time of the Founding, our Nation has recognized her religious heritage, and the Constitution has never been understood to prohibit those acknowledgments. From the national motto "In God We Trust" to the House and Senate Chaplains to the frieze of Moses and the Ten Commandments in the Supreme Court, "because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs." *Lynch v. Donnelly*, 465 U.S. 668, 693 (1984) (O'Connor, J., concurring).

ARGUMENT

America was formed by those fleeing religious persecution. Seeking to forge a land where each person could live and worship God as he or she believed best, the Framers established a country predicated on a simple, yet profound, postulate—declared in the document that gave birth to our Nation:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

From that day forward, the United States has fought to protect the freedom of conscience of all her citizens, while at the same time acknowledging the heritage behind our Nation's founding. Abraham Lincoln, famously dedicating and consecrating that bloody Pennsylvania battlefield, put it this way:

> ". . . that we here highly resolve that these dead shall not have died in vain, that this nation under God shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth." Abraham Lincoln, The Gettysburg Address (Nov. 19, 1863).

In 1942 we were again at war, and Congress adopted our Nation's Pledge of Allegiance to the United States flag. H.R. REP. NO. 2047, 77-2047 at 1 (1942); S. REP. NO. 77-1477, at 1 (1942). Twelve years later, at the height of the Cold War, Congress amended the Pledge of Allegiance by adding the words "under God." Act of June 14, 1954, ch. 297, §7, 68 Stat. 249. As amended and in its current form, the Pledge reads: "I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all." 4 U.S.C. 4.

The words "under God" were added to the Pledge of Allegiance in an effort to illuminate a key distinction between our government and those of Communist nations. Congressional Committee Reports from the time of the 1954 amendment note, for example, that whereas the Communists were "spiritual[ly] bankrupt[]," S. REP. NO. 83-1287, at 2 (1954), our government recognized the importance of each human "endowed by [God] with certain inalienable rights which no civil authority may usurp," H.R. REP. NO. 83-1693, at 2 (1954). The Reports also note the great number of similar references to God in historical and patriotic documents throughout our history. H.R. REP. NO. 1693, at 2; S. REP. NO. 1287, at 2.

Despite decades of patriotic acknowledgment of our Nation's religious heritage in the Pledge of Allegiance—and despite centuries of other similar historical and patriotic acknowledgments of religion by our government—Respondent Newdow successfully challenged the constitutionality of the Pledge of Allegiance's recitation to and by schoolchildren in the State of California. *See Newdow v. U.S. Congress*, 292 F.3d 597, 607-12 (9th Cir. 2002), *cert. granted, Elk Grove Unified Sch. Dist. v. Newdow*, 124 S.Ct. 384 (2003). Because that decision by the Ninth Circuit Court of Appeals is contrary to this Court's well-settled Establishment Clause jurisprudence, the *Amici* States respectfully request that the Court reverse the judgment below.

I. HISTORICAL AND PATRIOTIC ACKNOWLEDGMENTS OF OUR NATION'S RELIGIOUS HERITAGE ARE NOT INCONSISTENT WITH THE FIRST AMENDMENT'S PROHIBITION ON THE ESTABLISHMENT OF RELIGION.

The First Amendment provides, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . . ." U.S. CONST. amend. I. Ultimately, both the

Free Exercise Clause and the Establishment Clause serve the same end: protecting and promoting religious liberty for all Americans.[2]

"It has never been thought either possible or desirable to enforce a regime of total separation [between religion and government]." *Comm. for Pub. Educ. v. Nyquist*, 413 U.S. 756, 760 (1973). Rather, the Establishment Clause ensures government neutrality towards religion. *See Wallace v. Jaffree*, 472 U.S. 38, 60 (1985). That is, government cannot favor religion over nonreligion, and it cannot favor one religion over another. *See Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968); *Abington Township*, 374 U.S., at 226.

At the same time, government cannot "show a callous indifference to religious groups" because "[t]hat would be preferring those who believe in no religion over those who do believe." *Zorach v. Clauson*, 343 U.S. 306, 314 (1952); *see also Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947) (stating that the First Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary"). As Justice Goldberg wrote in *Abington Township*,

> "untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such

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2. *Cf. Sch. Dist. of Abington Tp. v. Schempp*, 374 U.S. 203, 305 (1963) (Goldberg, J., concurring) ("The basic purpose of the religion clause of the First Amendment is to promote and assure the fullest possible scope of religious liberty and tolerance for all and to nurture the conditions which secure the best hope of attainment of that end.").

> results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it. Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion. . . ." 374 U.S., at 306 (Goldberg, J., concurring).

This Court has long held that the Establishment Clause is elastic enough to "permit[] government some latitude in recognizing and accommodating the central role religion plays in our society." *County of Allegheny v. ACLU*, 492 U.S. 573, 657 (1989) (Kennedy, J., concurring in judgment and dissenting in part). The Constitution does not "require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility towards any." *Lynch*, 465 U.S., at 673.

Because it would prohibit the legitimate recognition of the "role religion plays in our society," and because it would constitute the "hostility" to religion that this Court has condemned, Respondent Newdow's position irreconcilably conflicts with the Court's Establishment Clause jurisprudence. Accordingly, the Court should reverse the Ninth Circuit's judgment and hold that the historical and patriotic acknowledgment of religion, such as the words "under God" in the Pledge of Allegiance, is not barred by the First Amendment to the United States Constitution.

A. Because of Their "History and Ubiquity," Acknowledgments of Religion in Patriotic or Historical Contexts Are Entirely Consistent with the Establishment Clause.

Although Respondent Newdow would contend that the First Amendment prohibits all government acknowledgment of religion, the Court has squarely rejected such an "absolutist approach" in favor of case-by-case analysis of "whether, in reality, [a challenged practice] establishes a religion, or religious faith, or tends to do so." *Lynch*, 465 U.S. at 678.

Repeatedly, the Court has cautioned that the Constitution does not "require complete separation of church and state." *Lynch*, 465 U.S., at 673. Indeed, the undeniable link between our Nation and her religious foundation is illustrated by the fact that "the very week that Congress approved the Establishment Clause as part of the Bill of Rights for submission to the states, it enacted legislation providing for paid chaplains for the House and Senate." *Id.*, at 674. Although the Court has struck down some forms of compelled religious practices in public schools, *see, e.g., Abington Township*, 374 U.S., at 223; *Lee v. Weisman*, 505 U.S. 577, 586-99 (1992); *Sante Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000), it has never applied the same exacting standards to longstanding patriotic traditions that are part of the history and heritage of our Nation.

Hence, in *Marsh v. Chambers*, 463 U.S. 783, 792-95 (1983), the Court held that the Nebraska Legislature's practice of opening its legislative sessions with a prayer was not an unconstitutional establishment of religion. The Court explained,

> "[i]n light of the unambiguous and unbroken history of more than 200 years, there can be no doubt that the practice of opening legislative sessions with prayer has become part of the fabric of our society. To invoke Divine guidance on a public body entrusted with making the laws is not, in

these circumstances, an 'establishment' of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country. As Justice Douglas observed, '[w]e are a religious people whose institutions presuppose a Supreme Being.'" *Id.*, at 792 (citation omitted).

Among the "countless other illustrations of the Government's acknowledgment of our religious heritage," *Lynch*, 465 U.S., at 677, is the "statutorily prescribed national motto 'In God We Trust,'" *id.*, at 676. And, of course, this Court itself begins its own proceedings with the cry, "God save the United States and this Honorable Court." *See Marsh*, 463 U.S., at 786.

In *Lynch*, the Court noted that "[o]ur history is replete with official references to the value and invocation of Divine guidance," including official Thanksgiving and Christmas holidays, House and Senate chaplains, the national motto "In God We Trust," the Pledge of Allegiance, religious paintings in the National Gallery, Moses holding the Ten Commandments on the frieze of this Court, and regular presidential proclamations for a National Day of Prayer.[3]

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3. The extent to which expressly religious and patriotic acknowledgments have been noted by this Court, without criticism, is well illustrated by the text of President Roosevelt's 1944 Proclamation of Thanksgiving, quoted at length by the Court in *Lynch*:

> "'[I]t is fitting that we give thanks with special fervor to our Heavenly Father for the mercies we have received individually and as a nation and for the blessings He has restored, through the victories of our arms and those of our Allies, to His children in other lands. . . .To the end that we may bear more earnest witness to our gratitude to Almighty God, I suggest a nationwide reading of the Holy Scriptures during the period from Thanksgiving Day to Christmas.'" 465 U.S., at 675 n.3 (quoting Proclamation No. 2629, 9 Fed. Reg. 13,099 (1944) and citing similar proclamations

465 U.S., at 673-77. As Justice O'Connor has observed, historical and patriotic acknowledgments of religion,

> "serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs." *Lynch*, 465 U.S., at 693 (O'Connor, J., concurring).

In the many States, likewise, acknowledgments of religious heritage are woven into history and ubiquitous. For example, the Constitution of the State of Texas begins, "Humbly invoking the blessings of Almighty God, the people of the State of Texas do ordain and establish this Constitution." TEX. CONST. pmbl. A "primary purpose" of Texas's required school curriculum, in turn, is statutorily prescribed as follows: "to prepare thoughtful, active citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage." TEX. EDUC. CODE §28.002(h). And, the provision requiring districts to lead students in daily, voluntary recitations of the Pledge, *id.* §25.082, directly furthers that purpose.

Such patriotic and historical recognitions, manifested throughout the many States, *see supra* note 1, are entirely consonant

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by six Presidents since (Proclamation No. 5098, 48 Fed. Reg. 42,801 (1983); Proclamation No. 4803, 45 Fed. Reg. 75,633 (1980); Proclamation No. 4333, 39 Fed. Reg. 40,003 (1974); Proclamation No. 4093, 36 Fed. Reg. 21,401 (1971); Proclamation No. 3752, 31 Fed. Reg. 13,635 (1966); Proclamation No. 3560, 28 Fed. Reg. 11,871 (1963)).

with the First Amendment. As the Court explained in *Engel v. Vitale*,

> "[t]here is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no resemblance to [conduct prohibited by the Establishment Clause]." 370 U.S. 421, 435 n. 21 (1962).

B. Virtually Every Reference to the Pledge of Allegiance—by the Court and Repeatedly by Individual Justices— Over the Decades Has Agreed that the Pledge is Entirely Consistent with the First Amendment.

This Court has repeatedly noted with particularity that the reference to God in the Pledge of Allegiance withstands Establishment Clause scrutiny. Illustrating the existence of "an unbroken history of official acknowledgment . . . of the role of religion in American life from at least 1789," the Court in *Lynch*, for example, noted—with no hint of criticism—"the language 'One nation under God' . . . [in] the Pledge of Allegiance to the American flag." 465 U.S., at 676. This language, like the national motto "In God We Trust" on United States currency and the frieze of the Ten Commandments in the Supreme Court, serves as an "illustration[] of the Government's acknowledgment of our religious heritage" that "help[s] explain why the Court consistently has declined to take a rigid, absolutist view of the Establishment Clause." *Id.*, at 676-78.

The Court repeated its view that the Pledge of Allegiance survives constitutional scrutiny in *County of Allegheny*, 492 U.S., at 602-03. The Court stated, "[o]ur previous opinions have considered in dicta the [national] motto and the pledge, characterizing them as consistent with the proposition that government may not communicate an endorsement of religious belief." *Id.* (citing *Lynch*, 465 U.S., at 693 (O'Connor, J., concurring); *see also id.*, at 716-17 (Brennan, J., dissenting)).

The opinions of the Court in *Lynch* and *County of Allegheny* were written or joined by Chief Justice Burger, Chief Justice Rehnquist, and Justices Brennan, White, Marshall, Blackmun, Powell, Stevens, and O'Connor. In addition, individual Justices have repeatedly agreed as well.

For example, Justice Brennan wrote in concurrence in *Abington Township*,

> "The reference to divinity in the revised pledge of allegiance . . . may merely recognize the historical fact that our Nation was believed to have been founded 'under God.' Thus reciting the pledge may be no more of a religious exercise than the reading aloud of Lincoln's Gettysburg Address, which contains an allusion to the same historical fact." 374 U.S., at 304.

Likewise, Justice O'Connor has expressed her view that the reference to God in the Pledge of Allegiance "serve[s] as an acknowledgment of religion with 'the legitimate secular purposes of solemnizing public occasions, [and] expressing confidence in the future.'" *See Wallace*, 472 U.S. at 78 n.5 (O'Connor, J., concurring) (citation omitted).

Other similar references are legion. *See, e.g., Lee*, 505 U.S., at 633-639 (Scalia, J., dissenting, joined by Rehnquist, C.J., and White & Thomas, JJ.); *County of Allegheny*, 492 U.S., at 674 n.10 (Kennedy, J., concurring in part and dissenting in part, joined by

Rehnquist, C.J., and White & Scalia, JJ.); *Engel*, 370 U.S., at 449 (Stewart, J., dissenting); *see also Abington Township*, 374 U.S., at 307-308 (Goldberg, J., concurring, joined by Harlan, J.).

Given that virtually every reference to the Pledge by the Court or by an individual Justice of the Court has confirmed its constitutionality,[4] to hold the Pledge unconstitutional—as the Ninth Circuit did below—would, as Chief Justice Burger directly observed in *Wallace v. Jaffree*, "make a mockery of our decisionmaking in Establishment Clause cases." 472 U.S., at 88 (Burger, C.J., dissenting).

This case presents the Court with an opportunity to hold unequivocally what it has already recognized repeatedly—that the Pledge's reference to God is a patriotic acknowledgment of religion entirely permissible under the Establishment Clause. The Court should so hold, and should reverse the contrary judgment of the Ninth Circuit Court of Appeals.

II. CENTURIES OF HISTORICAL AND PATRIOTIC ACKNOWLEDGMENT OF RELIGION HAVE NOT THREATENED THE FIRST AMENDMENT'S PROHIBITION ON ESTABLISHED RELIGION.

Our Nation's acknowledgment of her undeniable religious heritage has never posed a threat of the dangers the Establishment Clause was intended to prevent, *see Lynch*, 465 U.S., at 686, and this case presents no exception. As the Court has noted,

4. *But see Engel*, 370 U.S., at 437 & n.1, 440 n.4, 441 (Douglas, J., concurring) (explaining that, in Justice Douglas's opinion, legislative chaplains, the use of the Bible for administration of oaths, the use of the GI Bill funds in denominational schools, the national motto "In God We Trust," federal tax exemptions for religious organizations, the cry "God save the United States and this Honorable Court," and the Pledge of Allegiance, *inter alia*, are all equally unconstitutional).

> "[t]he 'fears and political problems' that gave rise to the Religion Clauses in the 18th century are of far less concern today. We are unable to perceive the Archbishop of Canterbury, the Vicar of Rome, or other powerful religious leaders behind every public acknowledgment of the religious heritage long officially recognized by the three constitutional branches of government. Any notion that these symbols pose a real danger of establishment of a state church is far-fetched indeed." *Id.* (internal citation omitted).

The Court should likewise conclude that the decades in which students have recited the Pledge of Allegiance in its current form have not created or tended to create an establishment of religion.

The *Amici* States therefore submit that between the two extremes of government endorsement of religion and government hostility against religion, there lies a broad zone in which government may recognize or acknowledge the important foundational role that religion has played in our Nation's history and heritage. Such practices are acceptable because they are "simply a tolerable acknowledgment of beliefs widely held among the people of this country." *Marsh*, 463 U.S., at 792. And they are constitutional because, rather than establishing religion, such practices are part of "an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789." *Lynch*, 465 U.S., at 674.

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CONCLUSION

The *Amici* States urge the Court to reverse the judgment of the Ninth Circuit Court of Appeals.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. MCBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General
for Litigation

DON R. WILLETT
Deputy Attorney General
for Legal Counsel

R. TED CRUZ
Solicitor General
Counsel of Record

P.O. Box 12548
Austin, Texas 78711-2548
(512) 936-1700

COUNSEL FOR *AMICI CURIAE*

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ALA. CODE §16-43-5. Students to be afforded opportunity to voluntarily recite pledge of allegiance to United States flag.

The State Board of Education shall afford all students attending public kindergarten, primary and secondary schools the opportunity each school day to voluntarily recite the pledge of allegiance to United States flag.

ALASKA STAT. §14.03.130. Display of flags and pledge of allegiance.

(a) United States and Alaska flags shall be displayed upon or near each principal school building during school hours and at other times the governing body considers proper. The governing body shall require that the pledge of allegiance be recited regularly, as determined by the governing body. A person may recite the following salute to the flag of the United States or maintain a respectful silence: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

(b) A school district shall inform all affected persons at the school of their right not to participate in the pledge of allegiance. The exercise of the right not to participate in the pledge of allegiance may not be used to evaluate a student or employee or for any other purpose.

ARIZ. REV. STAT. §15-506. Flag display; recitation of the pledge of allegiance.

School authorities shall purchase a United States flag, flagstaff and appurtenances, display the flag upon or near the school building during school hours and at such other times as they direct and set aside a specific time each day for those students who wish to recite

the pledge of allegiance to the United States flag.

ARK. CODE §6-16-122. American heritage.

(a) Local school boards shall allow any teacher or administrator in a public school district of this state to read or post in a public school building, classroom, or event any excerpts or portions of:

* * *

(7) The Pledge of Allegiance;

* * *

CAL. EDUC. CODE §52720. Daily performance of patriotic exercises in public schools.

In every public elementary school each day during the school year at the beginning of the first regularly scheduled class or activity period at which the majority of the pupils of the school normally begin the school day, there shall be conducted appropriate patriotic exercises. The giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy the requirements of this section.

In every public secondary school there shall be conducted daily appropriate patriotic exercises. The giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy such requirement. Such patriotic exercises for secondary schools shall be conducted in accordance with the regulations which shall be adopted by the governing board of the district maintaining the secondary school.

COLO. REV. STAT. tit. 22, §22-1-106. Information as to honor and use of flag.

* * *

(2)(a) The teacher and students in each classroom in each public elementary, middle, and junior high school in the state of Colorado shall begin each school day by reciting aloud the pledge of allegiance to the flag of the United States of America. The teacher and students in each classroom in each public high school in the state of Colorado shall recite aloud the pledge of allegiance to the flag of the United States of America when the school conducts its daily announcements. If a public high school does not conduct daily announcements, then the teacher and students in each classroom in the public high school shall, on a daily basis, recite aloud the pledge of allegiance to the flag of the United States of America.

(b) Nothing in this subsection (2) shall be construed to require a teacher or a student to recite the pledge of allegiance described in paragraph (a) of this subsection (2) if the teacher or student objects to the recitation of the pledge on religious grounds. A student shall be exempt from reciting the pledge of allegiance if a parent or guardian of the student objects in writing to the recitation of the pledge on any grounds and files the objection with the principal of the school.

(c) Nothing in this subsection (2) shall be construed to require students and teachers who are not United States citizens and are attending or teaching school in the state of Colorado to recite the pledge of allegiance described in paragraph (a) of this subsection (2).

CONN. GEN. STAT §10-230. Flags in schoolrooms and schools. Policy on the reciting of the "Pledge of Allegiance."

* * *

(c) Each local and regional board of education shall develop a policy to ensure that time is available each school day for students in the schools under its jurisdiction to recite the "Pledge of Allegiance." The provisions of this subsection shall not be construed to require any person to recite the "Pledge of Allegiance."

DEL. CODE tit. 14, §4105. Salute to flag and pledge of allegiance.

In the opening exercises of every free public school each morning, the teachers and pupils assembled shall salute and pledge allegiance to the American flag as follows: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all."

FLA. STAT. §1003.44. Patriotic programs; rules.

(1) Each district school board may adopt rules to require, in all of the schools of the district, programs of a patriotic nature to encourage greater respect for the government of the United States and its national anthem and flag, subject always to other existing pertinent laws of the United States or of the state. When the national anthem is played, students and all civilians shall stand at attention, men removing the headdress, except when such headdress is worn for religious purposes. The pledge of allegiance to the flag, "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all," shall be rendered by students standing with the right hand over the heart. The pledge of

the allegiance to the flag shall be recited at the beginning of the day in each public elementary, middle, and high school in the state. Each student shall be informed by posting a notice in a conspicuous place that the student has the right not to participate in reciting the pledge. Upon written request by his or her parent, the student must be excused from reciting the pledge. When the pledge is given, civilians must show full respect to the flag by standing at attention, men removing the headdress, except when such headdress is worn for religious purposes, as provided by Pub. L. ch. 77-435, s. 7, approved June 22, 1942, 56 Stat. 377, as amended by Pub. L. ch 77-806, 56 Stat. 1074, approved December 22, 1942.

* * *

GA. CODE §20-2-310. Access to campus or to student directory information by military forces; voter registration; pledge of allegiance; instruction in correct use and display of flag.

* * *

(c)(1) Each student in the public schools of this state shall be afforded the opportunity to recite the Pledge of Allegiance to the flag of the United States of America during each school day. It shall be the duty of each local board of education to establish a policy setting the time and manner for recitation of the Pledge of Allegiance. Such policy shall be established in writing and shall be distributed to each teacher within the school.

IDAHO CODE §33-1602. United States Constitution - National flag and colors - National anthem - "America" - Citizenship.

* * *

(2) Instruction in the proper use, display and history of and

respect for the American flag and the national colors shall be given in all elementary and secondary schools. Such instruction shall include the pledge of allegiance to the flag, the words and music of the national anthem, and of "America."

(3) Every school board of trustees shall cause the United States flag to be displayed in every classroom during the school hours of each school day.

(4) Every public school shall offer the pledge of allegiance or the national anthem in grades one (1) through (12) at the beginning of each school day.

(5) No pupil shall be compelled, against the pupil's objections or those of the pupil's parent or guardian, to recite the pledge of allegiance or to sing the national anthem.

ILL. STAT. ch. 105, para. 5/27-3. Patriotism and principles of representative government – Proper use of flag – Method of voting – Pledge of Allegiance

American patriotism and the principles of representative government, as enunciated in the American Declaration of Independence, the Constitution of the United States of America and the Constitution of the State of Illinois, and the proper use and display of the American flag, shall be taught in all public schools and other educational institutions supported or maintained in whole or in part by public funds. No student shall receive a certificate of graduation without passing a satisfactory examination upon such subjects.

Instruction shall be given in all such schools and institutions in the method of voting at elections by means of the Australian Ballot system and the method of the counting of votes for candidates.

The Pledge of Allegiance shall be recited each school day by

pupils in elementary and secondary educational institutions supported or maintained in whole or in part by public funds.

IND. CODE §20-10.1-4-2.5. Protected writings, documents, and records of American history or heritage.

Sec. 2.5. (a) This section applies to the following writings, documents, and records:

* * *

(4) The Pledge of Allegiance.

* * *

(b) A school corporation may allow a principal or teacher in the school corporation to read or post in a school building or classroom or at a school event any excerpt or part of a writing, document, or record listed in subsection (a).

KAN. STAT. §72-5308. Patriotic exercises; flag etiquette, observation of holidays.

(a) The state board of education shall prepare for the use of the public schools a program providing for patriotic exercises the board deems to be expedient, under such instructions as may best meet the varied requirements of the different grades in such schools. The program of patriotic observation of every school district shall include:

(1) A daily recitation of the pledge of allegiance to the flag of the United States of America;

* * *

KY. REV. STAT. §158.175. Recitation of Lord's prayer and pledge of allegiance; instruction in proper respect for and display of the flag; observation of moment of silence or reflection.

* * *

(2) The board of education of each school district shall establish a policy and develop procedures whereby the pupils in each elementary and secondary school may participate in the pledge of the allegiance to the flag of the United States at the commencement of each school day.

* * *

LA. REV. STAT. §17:2115. Silent prayer or meditation; pledge of allegiance.

* * *

B. Each parish and city school board in the state shall also permit the proper authorities of each school to allow the opportunity for group recitation of the "Pledge of Allegiance to the Flag." Such recitation shall occur at the commencement of the first class of each day in all grades and in all public schools.

MD. CODE EDUC. §7-105. Patriotic observances.

* * *

(c) Each county board shall:

(3) Require all students and teachers in charge to stand and face the flag and while standing give an approved salute and recite in unison the pledge of allegiance as follows: "I pledge allegiance to the flag of the United States of America and to the Republic for

which it stands, one nation under God, indivisible, with liberty and justice for all."

* * *

MASS. GEN. LAWS ch. 71, §69. Display of national flags; pledge of allegiance; penalty for violation.

The school committee shall provide for each schoolhouse under its control, which is not otherwise supplied, flags of the United States of silk or bunting not less than two feet long, such flags or bunting to be manufactured in the United States, and suitable apparatus for their display as hereinafter provided. A flag shall be displayed, weather permitting, on the school building or grounds on every school day and on every legal holiday or day proclaimed by the governor or the President of the United States for especial observance; provided, that on stormy school days, it shall be displayed inside the building. A flag shall be displayed in each assembly hall or other room in each such schoolhouse where the opening exercises on each school day are held. Each teacher at the commencement of the first class of each day in all grades in all public schools shall lead the class in a group recitation of the "Pledge of Allegiance to the Flag." A flag shall be displayed in each classroom in each such schoolhouse. Failure for a period of five consecutive days by the principal or teacher in charge of a school equipped as aforesaid to display the flag as above required, or failure for a period of two consecutive weeks by a teacher to salute the flag and recite said pledge as aforesaid, or to cause the pupils under his charge so to do, shall be punished for every such period by a fine of not more than five dollars. Failure of the committee to equip a school as herein provided shall subject the members thereof to a like penalty.

MINN. STAT. §121A.11. United States Flag.

* * *

Subd. 3. Pledge of allegiance.

(a) All public and charter school students shall recite the pledge of allegiance to the flag of the United States of America one or more times each week. The recitation shall be conducted:

(1) by each individual classroom teacher or the teacher's surrogate; or

(2) over a school intercom system by a person designated by the school principal or other person having administrative control over the school.

A local school board or a charter school board of directors may annually, by majority vote, waive this requirement.

(b) Any student or teacher may decline to participate in recitation of the pledge.

(Text of Subd. 3, par. (c), is effective for the 2004-2005 school year and later.)

MISS. CODE §37-13-7. Pledges of Allegiance to flags.

(1) The boards of trustees of the public schools of this state shall require the teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at least once during each school month, such oath of allegiance being as follows:

"I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

* * *

MO. STAT. §171.021. Schools receiving public moneys to display United States flag.

* * *

2. Every school in this state which is supported in whole or in part by public moneys shall ensure that the Pledge of Allegiance to the flag of the United States of America is recited in at least one scheduled class of every pupil enrolled in that school no less often than once per week. No student shall be required to recite the Pledge of Allegiance.

MONT. CODE §20-7-133. Pledge of allegiance required – exemption for students and teachers.

(1) Except as provided in subsection (4), the pledge of allegiance to the flag of the United States of America must be recited in all public schools of the state.

* * *

(4) A school district shall inform all students and teachers of their right to not participate in recitation of the pledge. Any student or teacher who, for any reason, objects to participating in the pledge exercise must be excused from participation. A student or teacher who declines to participate in the pledge may engage in any alternative form of conduct so long as that conduct does not materially or substantially disrupt the work or discipline of the school.

NEV. REV. STAT. §389.040. Patriotic observance.

Each public school shall set aside appropriate time at the beginning of each school day for pupils to pledge their allegiance to the flag of the United States. In addition, each public school may set aside appropriate time during the school day for additional patriotic observance.

N.H. REV. STAT. §194:15-c. New Hampshire School Patriot Act.

I. As a continuation of the policy of teaching our country's history to the elementary and secondary pupils of this state, this section shall be known as the New Hampshire School Patriot Act.

II. A school district shall authorize a period of time during the school day for the recitation of the pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be voluntary.

III. Pupils not participating in the recitation of the pledge of allegiance may silently stand or remain seated but shall be required to respect the rights of those pupils electing to participate. If this paragraph shall be declared to be unconstitutional or otherwise invalid, the remaining paragraphs in this section shall not be affected, and shall continue in full force and effect.

N.J. STAT. §18A:36-3. Display of and salute to flag; pledge of allegiance.

Every board of education shall:

* * *

(c) Require the pupils in each school in the district on every school day to salute the United States flag and repeat the following

pledge of allegiance to the flag: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all," which salute and pledge of allegiance shall be rendered with the right hand over the heart, except that pupils who have conscientious scruples against such pledge or salute, or are children of accredited representatives of foreign governments to whom the United States government extends diplomatic immunity, shall not be required to render such salute and pledge but shall be required to show full respect to the flag while the pledge is being given merely by standing at attention, the boys removing the headdress.

N.M. STAT. §22-5-4.5. Pledge of allegiance.

Local school boards shall provide that the pledge of allegiance shall be recited daily in each public school in the school district according to regulations adopted by the state board.

N.Y. EDUC. Law §802. Instruction relating to the flag; holidays.

1. It shall be the duty of the commissioner to prepare, for the use of the public schools of the state, a program providing for a salute to the flag and a daily pledge of allegiance to the flag, and instruction in its correct use and display which shall include, as a minimum, specific instruction regarding respect for the flag of the United States of America, its display and use as provided by federal statute and regulation and such other patriotic exercises as may be deemed by him to be expedient, under such regulations and instructions as may best meet the varied requirements of the different grades in such schools. However, such instruction shall include, as a minimum, the provisions of sections one hundred seventy through one hundred seventy-seven of title thirty-six of the

United States Code.

* * *

N.C. GEN. STAT.§115C-47. Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

* * *

(29a) To Encourage the Display of the United States and North Carolina Flags, and to Encourage the Recitation of the Pledge or Oath of Allegiance. – Local boards of education are encouraged to adopt policies to (i) provide for the display of the United States and North Carolina flags in each classroom, (ii) provide the opportunity for students to recite the Pledge or Oath of Allegiance on a regular basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom.

N.D. CENT. CODE §15.1-19-03.1. Recitation of prayer – Period of silence – Pledge of allegiance.

* * *

4. A school board may authorize the voluntary recitation of the pledge of allegiance by a teacher or one or more students at the beginning of each school day. A student may not be required to recite the pledge of allegiance, stand during the recitation of the pledge of allegiance, or salute the American flag.

OHIO REV. CODE §3313.602. Policy on Oral Recitation of Pledge of Allegiance to Flag; Emphasis on Democratic and Ethical Principles; Veterans' Day Observance.

(A) The board of education of each city, local, exempted village, and joint vocational school district shall adopt a policy specifying whether or not oral recitation of the pledge of allegiance to the flag shall be a part of the school's program and, if so, establishing a time and manner for the recitation. The policy adopted under this division shall not require any student to participate in the recitation and shall prohibit the intimidation of any student by other students or staff aimed at coercing participation.

* * *

OKLA. STAT. tit. 70, §24-106. United States flag – Display – Instruction in history and etiquette – Pledge of allegiance.

* * *

C. Students are authorized to recite, at the beginning of each school day, the pledge of allegiance to the flag of the United States of America as enumerated at 36 U.S.C., Section 172. Each student shall be informed by posting a notice in a conspicuous place that students not wishing to participate in the pledge shall not be required to do so.

OR. REV. STAT. §339.875. Procurement, display and salute of flags.

(1) Each district school board shall:

(a) Procure a United States flag and an Oregon State flag of suitable sizes and shall cause such flags to be displayed upon or near each public school building during school hours, except in

unsuitable weather, and at such other times as the board deems proper.

(b) Provide students with the opportunity to salute the United States flag at least once each week of the school year by reciting: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

(2) Students who do not participate in the salute provided for by this section must maintain a respectful silence during the salute.

---

24 PA. CONS. STAT. §7-771. Display of the United States flag; development of patriotism.

* * *

(c)(1) All supervising officers and teachers in charge of public, private or parochial schools shall cause the Flag of the United States of America to be displayed in every classroom during the hours of each school day and shall provide for the recitation of the Pledge of Allegiance or the national anthem at the beginning of each school day. Students may decline to recite the Pledge of Allegiance and may refrain from saluting the flag on the basis of religious conviction or personal belief. The supervising officer of a school subject to the requirements of this subsection shall provide written notification to the parents or guardian of any student who declines to recite the Pledge of Allegiance or who refrains from saluting the flag.

(2) This subsection shall not apply to any private or parochial school for which the display of the flag, the recitation of the Pledge of Allegiance or the salute of the flag violates the religious conviction on which the school is based.

* * *

R.I. GEN. Laws §16-22-11. Pledge of allegiance.

(a) All public schools, commencing with preprimary school through and including high school, shall commence each day with the following pledge:

"I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all."

(b) Any person not wishing to participate in the "pledge of allegiance" is exempt from participation and need not participate in the pledge.

S.C. CODE §59-1-455. Time for pledge of allegiance required.

Beginning with the 1991-92 school year, all public school students, commencing with grades kindergarten through and including high school, shall during the course of each school day's activities at a specific time which must be designated by the local school say the Pledge of Allegiance as follows:

"I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Any person not wishing to say the "Pledge of Allegiance" or otherwise participate in saying the "Pledge of Allegiance" is exempt from participation and may not be penalized for failing to participate.

A person who does not wish to participate may leave the classroom, may remain in his seat, or may express his nonparticipation in any form which does not materially infringe upon the rights of other persons or disrupt school activities.

S.D. CODIFIED LAWS §13-24-17.2. Right to post flag, recite pledge of allegiance and sing national anthem not to be infringed.

The right to post the United States flag shall not be limited or infringed upon in any public school classroom, public school building, at any public school event, or on any public school uniform. The right to recite the pledge of allegiance to the flag of the United States shall not be limited or infringed upon, and the national anthem may be sung during any school day or school event.

TENN. CODE §49-6-1001. American flag and emblems.

* * *

(c)(1) Each board of education shall require the daily recitation of the pledge of allegiance in each classroom in the school system in which a flag is displayed. Each LEA is encouraged to have a flag in each classroom and patriotic, fraternal, and other organizations or individuals are encouraged to donate flags to schools to enable them to have the flag of the United States of American present in each classroom. Each board of education shall determine the appropriate time during the school day for the recitation of the pledge of allegiance. At the time designated for the recitation of the pledge of allegiance, students shall stand and recite the pledge of allegiance while facing the flag with their right hands over their hearts or in an appropriate salute if in uniform; provided, however, that no student shall be compelled to recite the pledge of allegiance if the student or the student's parent or legal guardian objects on religious, philosophical or other grounds to the student participating in such exercise. Students who are thus exempt from reciting the pledge of allegiance shall remain quietly standing or sitting at their desks while others recite the pledge of allegiance and shall make no display that disrupts or distracts others who are reciting the pledge

of allegiance. Teachers or other school staff who have religious, philosophical, or other grounds for objecting are likewise exempt from leading or participating in the exercise. If a teacher chooses not to lead the pledge, another suitable person shall be designated either by the teacher or principal to lead the class. Each board of education shall provide appropriate accommodations for students, teachers or other staff who are unable to comply with the procedures described herein due to disability.

* * *

TEX. EDUC. CODE §25.082. School Day; Pledges of Allegiance; Minute of Silence.

* * *

(b) The board of trustees of each school district shall require students, once during each school day at each school in the district, to recite:

(1) the pledge of allegiance to the United States flag in accordance with 4 U.S.C. Section 4, and its subsequent amendments; and

(2) the pledge of allegiance to the state flag in accordance with Subchapter C, Chapter 3100, Government Code.

(c) On written request from a student's parent or guardian, a school district shall excuse the student from reciting a pledge of allegiance under Subsection (b).

UTAH CODE §53A-13-101.6. Instruction on the flag of the United States of America.

* * *

(3)(a) The pledge of allegiance to the flag shall be recited at the beginning of the day in each elementary public school in the state.

(b) Local school boards are encouraged to provide for the reciting of the pledge of allegiance to the flag once a week at the beginning of a school day in their secondary schools.

* * *

VA. CODE §22.1-202. Instruction in history and principles of flags of United States and Virginia; pledge of allegiance to American flag; guidelines developed by the Board.

* * *

C. Each school board shall require the daily recitation of the Pledge of Allegiance in each classroom of the school division and shall ensure that the flag of the United States is in place in each such classroom. Each school board shall determine the appropriate time during the school day for the recitation of the Pledge. During such Pledge of Allegiance, students shall stand and recite the Pledge while facing the flag with their right hands over their hearts or in an appropriate salute if in uniform; however, no student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise. Students who are thus exempt from reciting the Pledge shall remain quietly standing or sitting at their desks while others recite the Pledge and shall make no display that disrupts or distracts others who are reciting the Pledge. School boards shall provide appropriate accommodations for students who are unable to comply with the procedures described herein due to disability.

The school board's code of conduct shall apply to disruptive behavior during the recitation of the Pledge in the same manner as

provided for other circumstances of such behavior.

WASH. REV. CODE §28A.230.140. United States flag – Procurement, display, exercises – National anthem.

The board of directors of every school district shall cause a United States flag being in good condition to be displayed during school hours upon or near every public school plant, except during inclement weather. They shall cause appropriate flag exercises to be held in each classroom at the beginning of the school day, and in every school at the opening of all school assemblies, at which exercises those pupils so desiring shall recite the following salute to the flag: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all". Students not reciting the pledge shall maintain a respectful silence. The salute to the flag or the national anthem shall be rendered immediately preceding interschool events when feasible.

W. VA. CODE §18-5-15b. Pledge of allegiance to the flag.

Every instructional day in the public schools of this state shall be commenced with a pledge of allegiance to the flag of the United States. Pupils who do not wish to participate in this exercise shall be excused from making such pledge.

WIS. STAT. §118.06. Flag, pledge of allegiance, and national anthem.

* * *

(2) Every public school shall offer the pledge of allegiance or the national anthem in grades one to 12 each school day. Every

private school shall offer the pledge of allegiance or the national anthem in grades one to 12 each school day unless the governing body of the private school determines that the requirement conflicts with the school's religious doctrines. No pupil may be compelled, against the pupil's objections or those of the pupil's parents or guardian, to recite the pledge or to sing the anthem.